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In the Supreme Court of the United States

October Term, 1972

No. 72-976

STATE OF OHIO, *ex rel.*
RONNIE WOODBURY and THOMAS WOODBURY,
Petitioners,
vs.
FLOYD A. COLLER, Common Pleas Judge
of Wood County, Ohio,
DANIEL T. SPITLER, Prosecuting
Attorney of Wood County, Ohio,
KENNETH H. ADAMS, Common Pleas
Judge of Wood County, Ohio,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT IN OPPOSITION

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PETITION NOT PRINTED
REPLY BRIEF NOT PRINTED

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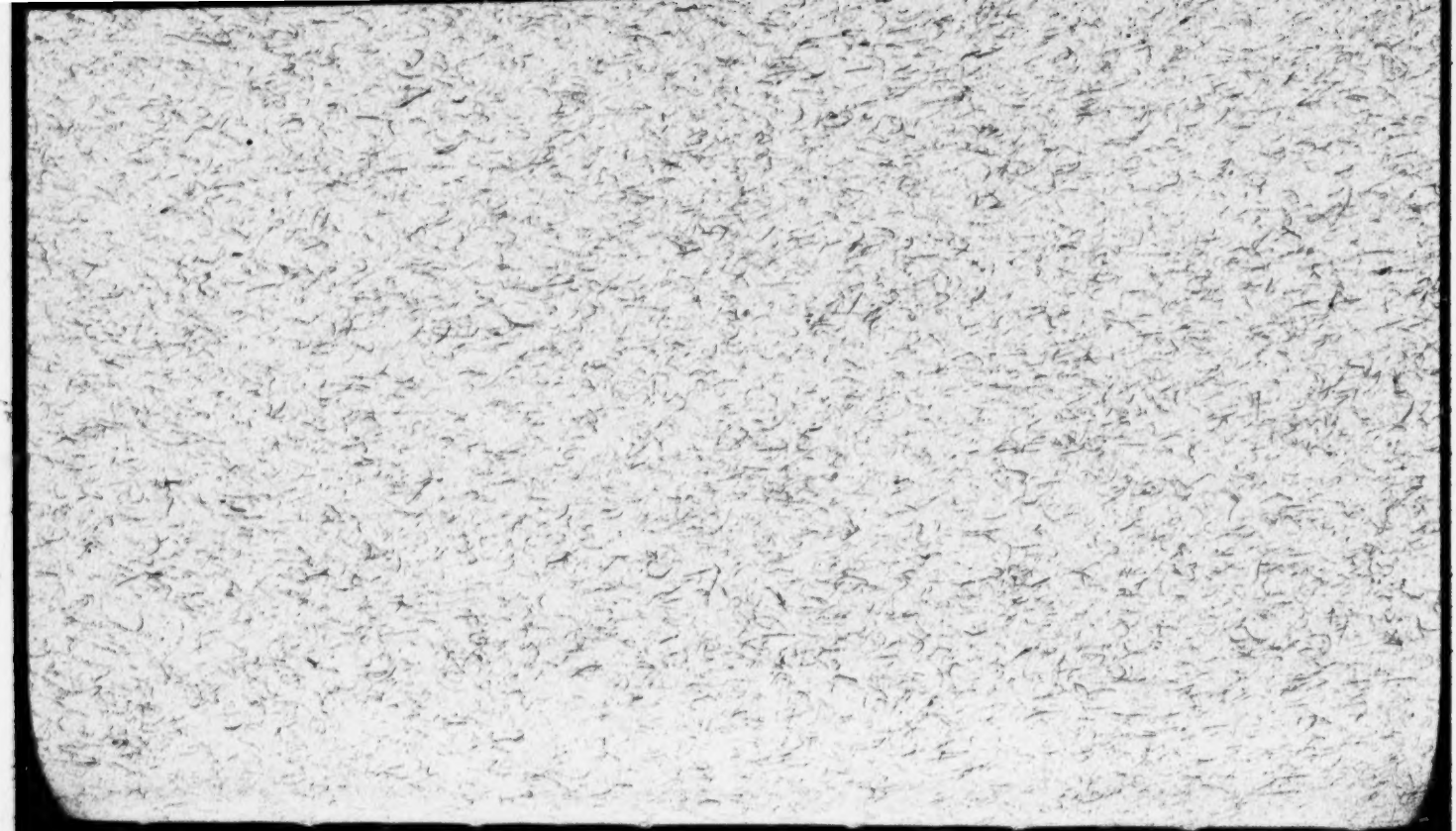

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STATEMENT OF FACTS

On December 21, 1970, the petitioners, Ronnie Woodbury and Thomas Woodbury agreed to plead guilty to one count of receiving stolen property. In return for this promise, Daniel T. Spitler agreed to *nolle prosequi* the other counts then pending against them. The practice of the prosecutor's office was to *nolle prosequi* only after sentencing. The reason for this is to prevent a fraud on the prosecutor's office by a defendant who would plead guilty and then later withdraw his plea after the remaining charges had been dropped.

On December 31, 1970, the attorney for Ronnie and Thomas Woodbury sent Judge Coller a letter asking the judge to formalize and conform an agreement made between the attorney for the defendants and Daniel Spitler (a copy of said letter is marked Exhibit A and attached hereto). Subsequent to this letter, the petitioners each plead guilty to a single charge of receiving stolen property on February 1, 1971. Judge Floyd Coller, on his own motion, withdrew petitioners' guilty pleas.

On March 4, 1971, during the January 1971 Term of the Court, the cases involving the petitioners were transferred by the respondent, Floyd A. Coller, to respondent, Kenneth H. Adams.

On July 1, 1971, three months after the transfer of the case to Judge Kenneth H. Adams, the court ordered all counts of the original indictment against the petitioners be set down for trial on July 20, 1971. Subsequently, the petitioners filed their petition for a writ of prohibition in the Court of Appeals for Wood County, Ohio.

With regard to James Falls, who was a petitioner in the Wood County Court of Appeals, along with the petitioners herein, and is not a party to this action, all indictments against him, except one, were dismissed, and the remaining count was the one to which he resubmitted his plea of guilty.

It should be noted that at this time petitioners are before the Ohio Supreme Court a review of the Wood County Court of Appeals' decision, which denied them a writ of mandamus in this matter. The petitioners sought to have, in that action the court ordered the prosecutor, Daniel Spitler, to drop all charges against the petitioners. The Wood County Court of Appeals denied this writ, and the petitioners are currently appealing this decision.

REASONS FOR DENYING WRIT

1. The Prosecutor's Office Stands Ready and Willing to Fulfill Their Part of the Bargain.

The plea bargaining process is not simply a promise of a plea of guilty to one or more counts of an indictment for a promise to dismiss a number of other charges; rather it is an agreement to drop the other charges after there has been a plea of guilty, accepted by the court, and sentencing by the court. To argue that a mere plea of guilty is all the bargain requires is to ask the prosecutor's office to gamble on the counts' acceptance, and the honesty of the defendant in not withdrawing the plea. Yet, this is the situation brought before this court. The petitioners indeed pleaded guilty, the court has refused to accept that plea. The prosecutor's office is willing to drop all counts in exchange for the guilty plea, the petitioners refuse to plead guilty to one count. Since there is no plea of guilty, the prosecutor is duty bound to proceed with the prosecution of Ronnie and Thomas Woodbury. The facts indicated that the prosecutor's office is willing to fulfill their part of the bargain (see Exhibit B attached hereto). James Falls, who was indicted with Ronnie and Thomas Woodbury changed his plea to guilty, and the remaining counts were dismissed.

2. The Petitioners Have Not Exhausted Their State Remedies.

At this point in time, the petitioners have not put the respondents to the test as to whether or not the respondents will dismiss the remaining counts of the indictment. All the petitioners would have to do is submit their plea

of guilty, have the court sentence them, and then make a motion to quash the remaining indictments.

With regard to the petitioners' allegations of denial of due process of law, under the Fifth and Fourteenth Amendments of the United States Constitution and Sections Ten and Sixteen of Article I of the Ohio Constitution, the petitioners have either failed to raise them in the prior actions or have raised them in actions which were either premature or improper.

3. The Prosecutor and the Judges Acted Within the Dictates of Santobello v. New York, 404 U.S. 257.

In *Santobello v. New York, supra,* this court ruled that if a prosecutor failed to live up to his predecessor's agreements made in plea bargaining, the judgment of the court must be vacated, and the defendant must be allowed to withdraw his plea of guilty.

The issues in *Santobello* are not even reached in the case we have before this court. The court is not refusing the defendants the right to withdraw their plea of guilty, in fact, the court, on its own motion, refused to accept their plea of guilty. By allowing *Santobello* to withdraw his guilty plea, this court then placed the burden on the prosecutor in that case to go forward and prosecute *Santobello* as best he could or come to a new plea bargaining agreement. Note, this is not what the petitioners are seeking. They desire this court to order the prosecutor's office, Floyd A. Coller, and Kenneth H. Adams to drop the charges now pending against Ronnie and Thomas Woodbury. *Santobello* does not stand for this proposition.

The petitioners quote *Green v. United States,* 355 U.S. 184, 2 L. Ed. 2d 199, 78 S. Ct. 221, to point out the Fifth Amendment provision against double jeopardy is designed

to protect an individual from being subjected to the hardships of trial and possible conviction more than once for an alleged offense. This case has not yet come to trial. The petitioners, by means of pre-trial motions, have prevented this case from coming to trial for more than two years. The petitioners do not seek to prevent the possibility of double jeopardy, they seek to prevent any trial whatsoever.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DANIEL T. SPITLER
Prosecuting Attorney
Wood County, Ohio

EXHIBIT A

HANNA, MIDDLETON & ROEBKE
Bowling Green, Ohio 43402

December 31, 1970

The Hon. Floyd A. Coller
Common Pleas Court
Wood County Court House
Bowling Green, Ohio 43402

RE: State vs. Ronnie Woodbury, No. 5790
State vs. Ronnie Woodbury, No. 5791
State vs. James Falls, No. 5792
State vs. Thomas Woodbury, No. 5793

Dear Judge Coller:

In regard to the above captioned cases, this is to confirm the previous understanding between you, I, and Daniel T. Spitler, Wood County Prosecutor, as to the imposition of sentences.

In this respect, Ronnie Woodbury is to plead guilty to one felony, to-wit: receiving stolen property, and the remaining three counts of receiving stolen property are to be dismissed at the request of the prosecutor. In addition, Mr. Woodbury is to be sentenced to the Ohio State Reformatory and will be released from that institution and placed on probation by you approximately six months after he has entered his foregoing plea of guilty and that in furtherance of this, I am to file a Motion for "shock" probation.

In regard to James Falls, he is to enter a plea of guilty to one count of breaking and entering an uninhabited

dwelling in the nighttime, and the remaining similar account is to be dismissed at the request of the prosecutor. In return, Mr. Falls is to be sentenced to the Ohio State Reformatory and that you will release him approximately eight (8) months after entering the foregoing plea of guilty upon my filing the appropriate motion for "shock" probation.

In regard to Thomas Woodbury, he is to enter a plea of guilty to one charge of breaking and entering an uninhabited dwelling in the nighttime and the remaining two similar accounts are to be dismissed by the request of the prosecutor. In return, Mr. Woodbury is to be sentenced to the Ohio State Penitentiary and is to be released approximately eight (8) months after entering the foregoing plea upon my filing the appropriate motion for "shock" probation.

It is further understood that Ronnie Woodbury, James Falls, and Thomas Woodbury will cooperate with and assist the office of the Wood County Prosecutor in furtherance of obtaining convictions against other law enforcement officials involved in the foregoing offenses or similar offenses in Wood County, Ohio. In this respect, it is understood that there will be no further prosecution commenced or indictments retained against Ronnie Woodbury, James Falls, or Thomas Woodbury, arising or connected directly or indirectly out of their cooperation with the Wood County Prosecutor's Office.

It is further understood that these defendants shall pay the costs of these proceedings and that based upon their cooperation, you will consider at a later date their possible earlier release than has been indicated heretofore, but that no specific promise is made in this respect.

In sentencing the foregoing defendants, it is understood that you shall recommend to the respective institution that the defendant being sentenced there be transferred to one of the honor institutions under the control of the Ohio State Correctional Authority.

Cordially yours,

Hanna, Middleton & Roebke
M. Shad Hanna
Attorney for Ronnie Woodbury, James Falls and Thomas Woodbury

cc: Mr. Daniel T. Spitler
Wood County Prosecuting Attorney

EXHIBIT B

No. 5790

IN THE COURT OF COMMON PLEAS
OF WOOD COUNTY, OHIO

STATE OF OHIO

vs.

RONNIE WOODBURY

AFFIDAVIT

(Filed October 11, 1972)

State of Ohio,
County of Wood, ss:

Daniel T. Spitler, Prosecuting Attorney of Wood County, Ohio, being first duly sworn on oath deposes and says that Ronnie Woodbury was indicted by the September 1970 Term of the Wood County Grand Jury on four counts of receiving stolen property, which are the charges contained in cases numbered 5790 and 5791.

Affiant further states that he and counsel for the defendant, M. Shad Hanna, entered into plea bargaining with the result that the defendant, Ronnie Woodbury, was to plead guilty to one count of the two indictments and after sentencing of Ronnie Woodbury, affiant agreed to file a motion with the Court to nolle prosequi the remaining three counts in cases numbered 5790 and 5791.

Affiant further states that he will comply with all the provisions of the plea bargaining agreement which were set forth in a letter dated December 31, 1970, from M. Shad

Hanna, attorney for defendant, Ronnie Woodbury, to the Honorable Floyd A. Coller, Judge of the Common Pleas Court, Wood County, Ohio; a copy of the letter is attached to this affidavit and made Exhibit "A".

Affiant further states that the State of Ohio is prepared to proceed with prosecution of cases numbered 5790 and 5791 and will not use as evidence against the defendant any statements or admissions or evidence resulting from such statements or admissions given by the defendant to the prosecution as a result of plea bargaining.

Affiant further states that this affidavit is filed with this Court pursuant to a mandate of the Ohio Supreme Court in the case of *State of Ohio, ex rel, Woodbury, et al, v. Coller, et al,* (1972) 31 Ohio St. 2d 195.

Further affiant saith not.

/s/ Daniel T. Spitler,

Affiant

(Jurat omitted)